



OFFICE OF INSPECTOR GENERAL

Thomas J. Dagley  
*Inspector General*

**MEMORANDUM**

January 12, 2006

TO: George Leventhal, President, County Council  
Douglas M. Duncan, County Executive  
Derrick Berlage, Planning Board Chairman

FROM: Thomas J. Dagley  
Inspector General

SUBJECT: Land Development Investigations

I am taking this opportunity to inform you of the work of the Office of Inspector General (OIG) regarding Clarksburg Town Center and other land development issues. There are two objectives of this memorandum: 1) provide information regarding our investigation of fraud allegations; and 2) provide observations and recommendations for consideration regarding legislative, policy, or procedural reforms that may be needed to strengthen control and oversight. To accomplish these objectives, an overview of the OIG's authority, resources, and procedures is presented followed by a brief discussion of complaint trends and investigative priorities regarding land development. I then present two observations with recommendations to improve governance in this important area.

It is important to note that our work on land development is an investigation in which the scope and methods used are subject to change as additional information is received. Although much of our work in 2005 was driven by Clarksburg Town Center residents who came to the OIG because they believe development problems in their community may be attributable to malfeasance, other credible allegations received in both 2005 and early 2006 are also receiving priority attention.

The OIG's work should not minimize the contributions that dedicated Maryland-National Capital Park and Planning Commission (MNCPPC) and County government employees make to land development activities on a daily basis.



### **OIG Authority, Resources, and Procedures**

The OIG is a statutory organization whose goals are to: 1) review the effectiveness and efficiency of programs and operations of County government and independent County agencies; 2) prevent and detect fraud, waste, and abuse in government activities; and 3) propose ways to increase legal, fiscal, and ethical accountability of County government departments and County-funded agencies<sup>1/</sup>.

Montgomery County Code §2-151 gives the Inspector General the authority to conduct investigations, budgetary analyses, and financial, management, or performance audits and similar reviews. It also gives the Inspector General access to any document or other information concerning operations, budget, or programs in County government and County-funded agencies. To perform these important duties, the OIG operates with an Inspector General, Deputy Inspector General, a full-time and a part-time Assistant Inspector General, and an Office Manager.

When an OIG investigation substantiates a complaint and the conduct of an individual is potentially a criminal violation<sup>2/</sup>, the OIG consults with the State's Attorney Office, the State Special Prosecutor, the U. S. Attorney, or other law enforcement agencies. When a completed OIG investigation is accepted for prosecutive consideration, the OIG formally refers the case to a prosecutor. If a case is declined, the OIG may prepare an investigative report on the matter to the Council, Executive and/or chief operating officer of the affected agency for an administrative decision.

An important attribute of the OIG is our ability to pursue a matter either criminally or administratively. This helps ensure taxpayers that all credible allegations of fraud, waste, or abuse are independently evaluated.

### **OIG Land Development Complaints and Investigation**

The OIG reviews and tracks all complaints. A determination to conduct an investigation is based on several factors including: the seriousness of the allegation, the potential to corroborate the information, and the existence of related complaints.

For fiscal years 1998 through 2004, we received six complaints involving land development projects. During fiscal year 2005 and the first six months of fiscal year 2006, eight complaints including the Clarksburg Town Center project were received. We are investigating two separate complaints alleging an applicant falsified data to meet Planning Board approval requirements. In addition, we are investigating alleged misuse of County Executive Regulation 28-93 AM and a provision allowing an "exemption" to septic reserve requirements for farm houses when property is subdivided.

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<sup>1/</sup> County-funded agencies include the Maryland-National Capital Park and Planning Commission (MNCPPC).

<sup>2/</sup> The OIG investigates possible County, State or federal violations by determining, for example, whether a person: intentionally misled public officials; willfully altered or concealed a public record; as a fiduciary, engaged in fraudulent misappropriation; or devised or attempted to devise a scheme to defraud.

### Clarksburg Town Center

At issue for the OIG is whether initial reports regarding height and setback violations that resulted in the identification of numerous additional allegations are the result of malfeasance and/or criminal conduct. Issues requiring investigation include:

- the authenticity of original, facsimile, or copies of certain site plan amendment documents and the validity of information or other documents presented to the Planning Board and staff, the Office of Legislative Oversight (OLO), the OIG, and others
- the significance of facsimile signatures of applicants or their representatives electronically transferred to site plan amendments or other planning documents
- whether properly executed site plans and amendments were used to file and approve record plats
- whether false, misleading, or altered entries appear on public records
- whether property was wrongfully transferred

To date, the OIG has not formally referred a completed land development case to a prosecutor.

### **Observations Regarding Control and Oversight**

Two observations and related recommendations have emerged from our investigative work to date. The observations focus on the use of standards I believe can help strengthen management control and oversight of land development activities.

### Independent Audits

Independent audits of land development activities have not been conducted to ensure adequate management control is in place. Specifically, generally accepted government auditing standards (GAGAS)<sup>3/</sup> have not been used for at least the past six fiscal years to evaluate land development application, review, and approval activities administered primarily by the Planning Board. Without audits that rely on specific standards<sup>4/</sup> to assess the County's control and oversight activities, there are no assurances that the Council, Executive, Planning Board, and others responsible for ensuring public confidence in land development will receive all of the objective and credible information needed.

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<sup>3/</sup> GAGAS are issued by the Comptroller General of the United States. They are intended for use by government auditors to ensure that they maintain competence, integrity, objectivity, and independence in planning, conducting, and reporting their work. They are to be followed by auditors and audit organizations when required by law, regulation, contract, agreement, or policy.

<sup>4/</sup> Government auditing standards include: independence, professional judgment, competence, quality control systems, and external peer reviews.

OIG inquiries with the Executive Director of MNCPPC and the County Director of the Department of Permitting Services (DPS) indicated that no performance or operational audits of land development programs or activities were completed during fiscal years 2000 through 2005. Information provided to the OIG indicated that, although financial audits and other assessment work were performed, no performance audits were used to assess management control.

A performance audit is an objective systematic examination of evidence that assesses the performance and management of a program or activity against specific criteria. Such audits can identify deficiencies considered significant in the design or operation of internal control that can adversely affect, for example, MNCPPC's ability to maintain reliable land development records. When reporting on the results of their work, auditors must disclose all material or significant facts known to them which, if not disclosed, could mislead knowledgeable users, misrepresent the results, or conceal improper or unlawful practices. Properly completed performance audits can provide the Council, Executive, and Planning Board with independent recommendations to improve public accountability.

There is no question of the potential value of nonaudit services such as internal management reviews and consultant services. At the same time, although nonaudit services are often based on specific professional standards, they may not be designed to perform certain verifications, analyses, and evaluations necessary to provide a basis for conclusions on land development records generated by the Planning Board and staff, applicants, and contractors. Audit services independent of the Planning Board and qualified to determine whether specific internal control procedures have been properly designed and placed into operation appear necessary to ensure all areas of high risk are addressed.

There is at least one State government audit organization capable of conducting the type of performance audit described above. The Office of Legislative Audits (OLA), Department of Legislative Services, Maryland General Assembly, is a nonpartisan audit agency responsible for conducting audits of State executive branch agencies and financial management audits of State public school districts. OLA's responsibility and authority are established by State Government Article, Section 2-1218 of the Annotated Code of Maryland. However, while OLA is recognized throughout State government as a professional audit organization with a reputation for performing rigorous comprehensive audits, OLA has neither the responsibility nor the authority to conduct audits for MNCPPC-related Montgomery County activities<sup>5/</sup>.

I recommend wider use of performance audits conducted by auditors independent of the Planning Board as an important tool to increase land development accountability.

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<sup>5/</sup> According to §2-1220, OLA is authorized to audit the expenditures or tax revenues of the MNCPPC relating to Prince George's County, by request of: the Joint Audit Committee of the General Assembly; the Prince George's County Executive; or the Prince George's County Council. A similar provision does not exist for Montgomery County.

### Inspector General Model

Second, one of the most effective ways to prevent and detect land development fraud, waste, or abuse in the County is through properly funded oversight entities, such as the Office of Inspector General. An independent OIG can solicit, receive, and investigate allegations and, when appropriate, seek a judicial or administrative remedy. An OIG outside day-to-day government operations can provide an increased likelihood that thorough objective investigations of possible improper conduct will be pursued.

However, the Inspector General model does not exist at the State of Maryland level and I am concerned that my office does not have the authority to independently investigate all land development complaints because MNCPPC operates under Article 28 of State law. In this regard, there appears to be a conflict between Article 28 and MCC§2-151 regarding the authority of the County OIG to investigate Planning Board and other MNCPPC activities involving Montgomery County. This issue has repeatedly surfaced during our investigation of the Clarksburg Town Center project.

While land development investigations involving the County are included in the OIG four-year work plan, dated August 2005, the Inspector General's authority to investigate all credible complaints is unclear. The problem appears to be that State law does not allow the level of OIG authority contemplated by the County OIG law. For example, while land development activities administered by the County Department of Permitting Services (DPS) are clearly within the OIG's authority, those administered by MNCPPC are not. Although I appreciate the early efforts of MNCPPC officials to pursue a memorandum of understanding with my office to clarify OIG authority for MNCPPC matters involving Montgomery County, I have concerns as to whether such a memorandum can adhere to the underlying principles of an independent OIG for County programs and activities.

In addition, I have been advised by the Office of the County Attorney that MCC §2-151 does not give the OIG authority to subpoena private parties, such as land development applicants and their representatives.

It is recommended that the County Council, in consultation with appropriate State officials, consider wider use of the Inspector General model to help prevent and detect land development abuse in the County. It is also recommended that the Council pursue changes to State law so that the County OIG law can be fully implemented.

**Conclusion**

The current land development controversy has cost the County and its residents large sums as measured by lost time and public trust. Although these costs do not necessarily show up in an operating budget or on an annual financial statement, they are material because they cost people their jobs, and agencies and businesses their reputations.

My office is committed to doing everything it can to help leadership restore public confidence in land development activities. I look forward to working with you in 2006.